

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

DOUGLAS SCHMID	§	PLAINTIFF
	§	
v.	§	CAUSE NO. 1:04CV855-LG-RHW
	§	
COMMISSIONER OF SOCIAL SECURITY	§	DEFENDANT
	§	

**ORDER ADOPTING PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW DENYING PLAINTIFF'S MOTION
FOR REVERSAL, MODIFICATION OR REMAND**

This cause comes before the Court on the Proposed Findings of Fact and Recommendation of United States Magistrate Judge Robert H. Walker entered in this cause on August 20, 2007. After thoroughly reviewing the findings in the Proposed Findings of Fact and Recommendation in addition to the positions of the Plaintiff advanced in his objection, the Court finds that the Report and Recommendation should be adopted as the finding of the Court for the reasons that follow.

Plaintiff, who has a ninth grade education, worked as a roughneck on an offshore oil rig from 1986 until 1997, when he was promoted to crane operator. On September 28, 2001, Plaintiff's right heel was badly broken, when the deer stand that he was occupying fell. The injury required the insertion of ten pins and a plate in Plaintiff's foot. In April of 2002, Plaintiff began to experience pain in his left knee, caused by him favoring his injured right foot. He underwent arthroscopic surgery on his left knee in May of 2002. Plaintiff was released to light duty work by his treating physician as of November 1, 2002. However, Plaintiff did not return to work and claims that he experiences pain every time he walks. The ALJ concluded that Plaintiff was disabled from September 28, 2001, through December 17, 2002, but not thereafter.

Magistrate Judge Walker reviewed the Plaintiff's Motion for Reversal, Modification or Remand [13] of the ALJ's decision, and determined that the decision is supported by substantial evidence.

In his objections, Plaintiff argues that the ALJ and Magistrate Judge Walker did not properly consider the Vocational Expert's opinion that if a person had a job at the light level and standing and walking increased the person's pain to such an extent that the person would be distracted from tasks, or would totally abandon tasks, then the person could not perform work at the light level. Plaintiff argues that the ALJ based his decision that Plaintiff was not disabled after December 17, 2002, on Plaintiff's alleged ability to perform jobs that required at least four hours of standing and walking. Plaintiff asserts that standing and walking would increase his level of pain to the extent that he would be unable to perform any work. However, the Vocational Expert's testimony regarding distraction caused by pain was merely a hypothetical, and he did not testify that the level of pain experienced by Plaintiff would actually cause distraction that would prevent him from working. Furthermore, Plaintiff's treating physician stated that Plaintiff's pain would not limit him to such a degree as to create serious problems if he was employed in a sedentary job. As Magistrate Judge Walker noted, the ALJ considered this evidence and determined that Plaintiff could only perform light jobs that allowed him to sit and stand at will.

After consideration of the Report and Recommendation filed in this cause, the Court finds no grounds to overturn the Report and Recommendation and further finds that the Report and Recommendation of Magistrate Judge Robert H. Walker entered on August 20, 2007, should be adopted as the finding of this Court. The Court further concludes that the Magistrate Judge's Report and Recommendation correctly found that Plaintiff's Motion for Reversal, Modification

or Remand should be denied.

IT IS THEREFORE ORDERED AND ADJUDGED that the Proposed Findings of Fact and Recommendation [22] of United States Magistrate Judge Robert H. Walker entered in this cause on August 20, 2007 should be, and the same hereby is, adopted as the finding of this Court.

IT IS FURTHER ORDERED AND ADJUDGED that Plaintiff's Motion for Reversal, Modification or Remand [13] is **DENIED**.

SO ORDERED AND ADJUDGED this the 17th day of September, 2007.

s/ *Louis Guirola, Jr.*

LOUIS GUIROLA, JR.

UNITED STATES DISTRICT JUDGE